

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 132 of 1999

SPECIAL CIVIL APPLICATION NO.133 OF 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAVAL ANILKUMAR DASHRATLAL

Versus

DIST.COLLECTOR MEHSANA

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Appearance:

MR PK JANI for Petitioners

Ms.Amy Yagnik, AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/02/99

ORAL JUDGEMENT

Rule.

Ms.Amy Yagnik, learned AGP waives service of Rule for the respondents in both the petitions.

2. In these petitions under Articles 226 of the Constitution the petitioners challenge the orders dated 29-12-1998 passed by the Collector, Mehsana, cancelling

the allotment of land made to the petitioners and/or their predecessors-in-title and forfeiting the land to the Government on the ground that there was breach of some of the conditions imposed while granting the land to the petitioners or their predecessors in title.

3. Land admeasuring 1 acre 14 gunthas from Survey No. 1951 at Mehsana was allotted by the District Collector, Mehsana to Mahalaxmi Cooperative Housing Society Limited (hereinafter referred to as the Society) vide order dated 28-10-1966 (Annexure A). Condition no.6 provided that without written permissions of the Collector the Society or its members shall not sell, transfer, gift or let out any plot of the Society. Condition no.12 provided that the land shall be used only for the purpose for which it was granted. The order also mentioned that the land was granted to the Society for constructing residential house for its members.

Thereafter by his order dated 18-11-1986 (Annexure H ) the Collector granted the request of the Society to delete condition no.10 which earlier required the members of the Society to keep 60% of the land vacant and permitted construction on only 40% of the land. The Society had represented that the land being Gamtal land 100% construction may be permitted and that request came to be granted.

It appears that the father of petitioners nos. 1 and 2, who was allotted plot No.1, had constructed the residential unit for family members and thereafter constructed shops and let them out to petitioners nos. 3 to 7 herein. The shops were constructed with building permission granted by Mehsana Municipality on 1-8-1988. The shops were let out in 1989. On 28-6-1995 the Collector issued notice to petitioner no.1 to show cause why the allotment should not be cancelled in view of the change of user and letting out of the shops to petitioners nos. 3 to 7. Petitioner No.1 replied by his letter dated 18-7-1995 pointing out that the land was allotted to the petitioners' father and that the petitioners were residing in the house constructed on a part of the land. Since the other portion of the land was lying unutilised and construction on 100% land was permissible, it being Gamtal land, with the permission of the Mehsana municipality the petitioners' father had put up construction; that looking to the size of the family of the two petitioners in future also some of the shops will be required. The petitioners also pointed out that in the case of Manibhai Motibhai Patel, who had constructed 14 shops in plot no.5 allotted to him, the

Collector, Mehsana had by order dated 21-12-1993 (Annex.I ) regularized the construction of the shops and that the petitioners' case was similar and therefore, order regularizing construction of the shops by the petitioners may be passed the petitioners were ready to pay such amount as may be determined.

4. Ultimately the Collector passed order dated 29-12-1998 holding that petitioner Nos. 1 and 2 had committed breach of the grant by permitting nonresidential user of the plot by construction of the shopping centre and also that the shops were let out without permission of the Collector. On the basis of the said order the City Survey Officer, Mehsana has given notice for taking over possession of the shops on 21-1-1999. On 18-1-1999 this Court granted ad interim order requiring the parties to maintain status quo.

5. Similarly, in Special Civil Application No.133 of 1999 Plot No.6 was earlier allotted to Patel Naranbhai Ramjibhai who sold the plot to Girishbhai Bhailalbhai Brahambhatt in 1984. In 1988-89 the said purchaser also similarly constructed shops on the land which was surplus after construction of the house on the said land for residential purposes. The shops were sold by the said purchaser to the seven persons, who are petitioners in SCA No.133/99. In their case also the Collector has passed order dated 29-12-1998 on the ground that Naranbhai had sold the plot to Girishbhai Brahambhatt without permission of the Collector and that the land was being utilised for commercial purpose. Hence in both the petitions the separate orders of the Collector are challenged.

6. The learned Counsel for the petitioners submits that since the Collector himself had passed order dated 18-11-1986 deleting condition No.10 (Annexure H) by which construction was earlier restricted to only 40% of the land, 100% construction was permissible on the land as it was gamtal land; the members of the Society had constructed residential units for themselves only on a part of the land and therefore, it was open to them to put up construction on the remaining portion of the land. The building permission of the municipality was also obtained before construction of the shops. Hence there was no illegality. It was further submitted that not obtaining the permission of the Collector for sale of plot no.6 to Girishbhai Brahambhatt or for sale of shops on the said plot to the petitioners of SCA No.133/99 or for letting out the shops on plot no.1 to petitioners

nos. 3 to 7 of SCA No.132/99 were not illegalities. At the most they were mere irregularities which could certainly be regularised by granting ex post facto permission. In the case of Manibhai Motibhai Patel, the Collector had regularized the construction of as many as 14 shops on plot no.5 in the same society by his order dated 21-3-1993. It is therefore, submitted by the learned Counsel that when the petitioners had brought this fact to the notice of the Collector in their reply to the show cause notice, the Collector ought to have considered the request of the petitioners for regularization subject to imposition of appropriate terms and conditions in accordance with law.

It was further submitted that the petitioners of Special Civil Application No.133/99 were bona fide purchasers of the shops in question for value without notice and that the previous owner Girishbhai Bhailalbhai Brahambhatt was also prepared to apply to the Collector for regularization.

7. On the other hand, Ms.Amy Yagnik, learned Asstt. Government Pleader supported the order passed by the Collector on the ground that there was breach of condition nos. 6 and 12 as the shops were let out or sold without permissions of the Collector and the plots were put to commercial use though the plots were granted for residential purposes only and also that plot no.6 was sold by the original owner without permission.

8. Having heard the learned Counsel for the parties, it appears that the members of the Society like petitioner nos. 1 and 2 in SCA No.132/99 and Naranbhai Patel in case of SCA No.133/99, admittedly constructed residential houses on their respective plots. When the original allotment was made condition no.10 provided that construction can be put up only on 40% of the land and remaining portion of the plot was to be kept vacant. That condition came to be deleted by the Collector in 1986 at the request of the Society and therefore, the concerned members including owner of plot no.5 constructed shops on the remaining land with the permission of municipality and by order dated 21-12-1993 (Annex.I) the Collector also regularized user of plot no.5 for construction of 14 shops subject to certain terms and conditions. The learned Asstt. Government Pleader is not in a position to dispute the assertions made on behalf of the petitioners that the petitioners are similarly situate as the owner of plot No.5 Manibhai Motibhai Patel. No incurable illegality is pointed out on behalf of the respondents except that the previous

permission of the Collector was not obtained either for selling/letting out or for change of the user. Under the circumstances the Collector ought to have considered the request of the petitioners for regularisation subject to imposition of appropriate terms and conditions.

9. In view of the above facts and circumstances and in view of the order dated 21-12-1993 (Annexure I ) passed by the Collector in case of owner of plot no.5, in the same society, the impugned orders dated 29-12-1998 passed by the Collectors and the impugned notices dated 5-1-1999 issued by the City Survey Superintendent, Mehsana ( AnnexureM colly) are hereby quashed and set aside and the matters are remanded to the Collector Mehsana for deciding the matters afresh in light of the observations made in this judgment.

10. Since in Special Civil Application No.133/99 the owner of plot No.6 is not joined as a party, the learned Counsel for the petitioners-purchasers of the shops states that the owner of plot no.6 will also file an application for regularization before the Collector Mehsana within three weeks from today.

11. Both these petitions are allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

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